

AMENDED IN SENATE JUNE 2, 2010

**SENATE BILL**

**No. 1373**

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**Introduced by Senator Leno**

February 19, 2010

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An act to add Section 6007.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1373, as amended, Leno. Sales and use taxes: retailer: ~~paving~~ construction contractor.

~~(1) The~~

*The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. A construction contractor generally does not sell materials to his or her customer, but instead uses the materials in furnishing and installing the materials in the performance of a construction contract, with either sales tax applying to the sale of materials to the construction contractor, or if sales tax does not apply, use tax applying to the storage, use, or other consumption of the materials purchased by the construction contractor. If the contractor has not purchased the materials, but has acquired them from its real property, no sales or use tax applies.*

*This bill would ~~exclude from tax, the sale of materials to, or the storage, use, or other consumption of materials by, a paving construction contractor, and instead, for contracts awarded on and after April 1, 2011, deem a paving~~ construction contractor the retailer of ~~the any aggregate-based materials he or she furnishes and installs in the~~*

~~performance of a paving construction contract, and that the contractor fabricates, manufactures, processes, or produces, and permanently incorporates into a construction project. The bill would specify how the gross receipts from the deemed retail sale are determined.~~

~~(2) The~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws. Those laws require that a local sales and use tax ordinance or transactions and use tax ordinance provide that amendments to the Sales and Use Tax Law automatically become a part of the ordinance.~~

~~The provisions of this bill would automatically be incorporated into those ordinances.~~

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.~~

~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.~~

~~This bill would take effect immediately as a tax levy.~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6007.7 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6007.7. (a) (1) A contractor that fabricates, manufactures,
- 4 processes, or produces materials that he or she furnishes and installs
- 5 in the performance of a paving construction contract shall be
- 6 deemed the retailer of those materials. The gross receipts from the

1 ~~retail sale of the materials shall be included in the measure of the~~  
2 ~~taxes imposed by this part. any aggregate-based materials that~~  
3 ~~the contractor permanently incorporates into a construction~~  
4 ~~project, shall be deemed the retailer of those materials.~~

5 (2) *This subdivision shall not apply to the reuse or recycling in*  
6 *a construction project of any aggregate-based materials that*  
7 *originate from the site of the construction project, nor to the use*  
8 *of fill dirt or sand materials that are transported to the construction*  
9 *site, that are not purchased by the contractor, and that are not*  
10 *crushed, blended, or processed.*

11 (3) *The gross receipts from the deemed retail sale of the*  
12 *aggregate-based materials shall be included in the measure of the*  
13 *taxes imposed by this part.*

14 (b) For purposes of this section, ~~a “paving construction contract”~~  
15 ~~means a construction contract to erect, construct, alter, or repair~~  
16 ~~streets, highways, sidewalks, driveways, curbs, gutters, parking~~  
17 ~~lots, or other similar structures. “aggregate-based materials”~~  
18 ~~means rock, sand, asphalt, or concrete.~~

19 (c) For purposes of this section, the gross receipts from the *retail*  
20 *sale of the materials shall be as follows:*

21 (1) The price at which the contractor sells similar materials in  
22 similar quantities ready for installation to other contractors.

23 (2) If the contractor does not sell similar materials in similar  
24 quantities ready for installation to other contractors, the price shall  
25 be deemed to be the amount stated in the price lists, bid sheets, or  
26 other records of the contractor.

27 (d) *This section shall apply to all contracts awarded on or after*  
28 *April 1, 2011.*

29 SEC. 2. This act provides for a tax levy within the meaning of  
30 Article IV of the Constitution and shall go into immediate effect.